United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

[illegible]675

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,094

ALFRED EUGENE RICE

Appellant,

v.

DISTRICT OF COLUMBIA

Appellee,

APPEAL FROM THE DISTRICT OF COLUMBIA
COURT OF APPEALS

CARROLL F. TYLER, JR.
Attorney for Appellant
613 F Street, N. W.
Washington, D. C.
National 8-2897

STATEMENT OF QUESTIONS INVOLVED

In the Juvenile Court for the District of Columbia where there is a case pending against a juvenile, does the Juvenile Court have the right to informally and in chambers, dismiss a case against a juvenile after having been acquainted with the facts of the case in open Court by counsel for the defendant and the Assistant Corporation Counsel, and after having further talked with the Public Officers involved, in chambers, during a recess and having further read the Juvenile Court record and the record of the grand jury action involved an adult co-defendant to the alleged offense whom the grand jury refused to indict, without the Assistant Corporation Counsel and counsel for defendant being present in chambers at the time of the informal discussion with the Public Officers prior to the decision to dismiss the charges.

INDEX

TABLE OF CASES

OTHER AUTHORITIES

STATEMENT OF THE CASE

A petition was filed with the approval of the Assistant Corporation Counsel by a Juvenile Intake Officer on June 19, 1964 in the Juvenile Court of the District of Columbia concerning Alfred Eugene Rice. It alleged that Rice and an adult companion, Herbert L. Bradford, assaulted a sixteen-year-old girl and had sexual relations with her against her will. On June 19, 1964 an initial hearing was held at which time the respondent, Rice, waived his right to counsel and denied the allegations of the petition. The case was continued for trial, respondent was placed on personal bond in the custody of his parents and he was ordered to obtain an attorney. An attorney for the respondent entered his appearance on June 23, 1964. On April 14, 1965 the case came to trial. The Assistant Corporation Counsel announced it was ready to proceed to trial. Respondent's attorney then requested a continuance. The Corporation Counsel objected. The trial judge granted the continuance and directed that the Assistant United States Attorney who had handled the charges arising out of the same incident against the respondent's companion, Bradford, to appear at the next scheduled hearing. Later on the same day, April 14, 1965, the trial judge conferred in chambers with the detective from the Metropolitan Police Sex Squad who had presented the case against Bradford to the Grand Jury, a Juvenile Officer, whose name appeared on the Youth Aid Division Complaint Sheet (form 380) and the Juvenile Court Officer who signed the petition.

The trial judge was informed by the detective that the Grand Jury had returned an "Ignoramus" after hearing alibi witnesses who accounted for the whereabouts of both the respondent, Rice, and Bradford at the time of the alleged rape. The trial judge then dismissed the petition and discharged the respondent in this case (#47-017-J). The docket entry notes that this action was taken with the consent and approval of the petitioning Intake Officer and both police officers.

On April 21, 1965 a Motion to Set Aside Dismissal was filed by the Corporation Counsel in the Juvenile Court. It asserted that (1) the Assistant Corporation Counsel entered its appearance on behalf of the District of Columbia on June 12, 1964 when it filed its approval of the petition; (2) the Assistant Corporation Counsel objected to the request and allowance of the continuance of the case on April 14, 1965; (3) the trial judge held in chambers conference with police witnesses without advice and notice to or consent or participation of the Assistant Corporation Counsel; (4) by ex parte dismissal the District of Columbia, a party to this action, was denied its right to receive due notice and, through counsel, to participate at all stages of these proceedings; and (5) no sworn testimony was taken.

The Motion raised the following issues:

(1) Does approval of a petition by Assistant Corporation Counsel constitute the entry of an appearance in a case involving a juvenile by the District of Columbia?

(2) Is the District of Columbia a party as of right to all

juvenile proceedings in the Juvenile Court of the District of Columbia, or, is the District of Columbia a party to juvenile proceedings only after an express request for assistance by the court, pursuant to sec. 11-1583(a) (1), D. C. Code 1961, Supp. IV?

(3) Did Assistant Corporation Counsel's approval of the petition and/or its physical presence in the courtroom at the scheduled trial of April 14, 1965, at which time it announced it was ready to proceed to trial and objected to respondent's attorney's request for a continuance, make the Assistant Corporation Counsel a party to the proceeding? Does the acquiescence of the trial judge to these activities by the Assistant Corporationimpliedly make the Assistant Corporation Counsel a perty to the proceedings?

(4) Does the Assistant Corporation Counsel qualify as a "party aggrieved" under sec. 11-741(b), D. C. Code 1961, Supp. IV regardless of whether the court requests its assistance under sec. 11-1583(a) (1) ?

(5) What is the proper role of the Assistant Corporation Counsel in Juvenile hearings in the Juvenile Court of the District of Columbia -- as an aide to the trial judge and the court or as the presenter of the case of the District of Columbia against the juvenile?

STATUTES INVOLVED

Sec. 11-1583(a) (1), D. C. Code 1961, Supp. IV: "The Corporation Counsel of the District of Columbia or any of his assistants shall (1) upon request, assist the Juvenile Court in hearings arising under section 11-1551;"

Section 16-2302, D. C. Code 1961, Supp. "* * * When the Director of Social Work finds that jurisdiction should be acquired, he shall, after consultation with and approval by the corporation counsel or his assistant assigned to the court, authorize a petition to be filed. Where the Director fails so to find, the person giving information to the Director may present the facts to the corporation counsel or his assistant , who, after investigation by an officer of the court as herein provided , may authorize a petition to be filed.***"

Section 16-2307, D. C. Code 1961, Supp. IV: "The court may conduct a hearing pursuant to this subchapter in an informal manner, and may adjourn the hearing from time to time.* * *"

Section 11-741 (a): "The District of Columbia Court of Appeals has jurisdiction of appeals from: * * *(3) final orders and judgments of the Juvenile Court of the District of Columbia. (b) Except as provided by subsection (c) of this section, a party aggrieved by an order or judgment specified by subsection (a) of this section, may appeal therefrom as of right to the District of Columbia Court of Appeals.* * *"

Section 11-741, D. C. Code 1961, Supp. IV is based on D. C. Code, 1961 ed. sections * * * and 11-772: Sec. 11-772(a), D. C. Code 1961 stated:"Any party aggrieved by any final order of judgment of * * * the Juvenile Court of the District of Columbia may appeal therefrom as of right to the Municipal Court of Appeals for the District of Columbia."

ARGUMENT

The law recognizes differences between the various types of parties there can be to proceedings and although neither the statute or case law relating to the Juvenile Court have as yet discussed this point, it is relevant here. Insofar as the term "party" has been defined in Juvenile Court procedure, it has been with reference to the statutory requirements of who is to be present at hearings in the Juvenile Court. The District of Columbia courts have so far only dealt with this question in terms of a person having a right to appeal. One fundamental raised in the instant case is whether "party" in the Juvenile Court means a party for all purposes.

The Motion asserts that the Assistant Corporation Counsel is made a party to all juvenile proceedings by virtue of its approval of petitions, pursuant to sec. 16-2302. This assertion can be construed to mean that the government is made a formal party to the

proceedings, with limited rights and standing, or it could mean it is made a necessary (and indeed nearly an indispensable) party to juvenile proceedings. The statute, legislative history and case law do not expressly clarify which is the proper construction. But, besides this lack of clarity, the former construction must prevail since the latter goes too far. That is, by asserting the government is a necessary party to all juvenile proceedings the Assistant Corporation Counsel could go so far as to maintain that the District of Columbia must be an active and participating necessary party to all proceedings involving juveniles in the Juvenile Court and thus, for example, have a right to participate in proceedings before the Hearing Officer and approve all dismissals ordered by him. Appellant does not believe this is what the Assistant Corporation Counsel intends. Certainly the language of sec. 16-2307, permitting informal hearings, and sec. 16-2308(d), stating that Juvenile Court proceedings involving juveniles are not criminal proceedings, and the use of the word "assist" in sec. 11-1583(a) (1), clearly indicate that adversary proceedings are not one of the earmarks of the D. C. Juvenile Court Act and nowhere does the Act indicate this overlord role for the Assistant Corporation Counsel. But, nevertheless, even though the assertion by the Assistant Corporation Counsel as to sec. 16-2302 and formal-party status may have some validity, to accept it is not also to concede what is at issue in the instant case.

The second assertion of the Motion calls attention to the fact that the Assistant Corporation Counsel was, in fact, present

in court and had actively taken part in the proceedings immediately prior to the scheduled trial in the instant case. At issue here is whether a formal request of the court is necessary under sec. 11-1583(a) (1) before the Assistant Corporation Counsel can become a party to the proceedings. Again the legal distinction between formal and necessary parties is relevant since this part of the Motion is focusing on the necessary-party status of the government in the juvenile proceedings. The Trial Court has the authority to make rulings and deliberations as all other courts, without the presence of the prosecutor and particularly when the Assistant Corporation Counsel's presence would add nothing to the deliberations.

The third and fourth contentions of the Motion objects to the ex parte hearing held by the trial judge in his chambers on April 14, 1965. The objections focus on the fact that the government was not advised or notified and did not consent or participate. It does not focus on the fact that a hearing in chambers was held. This is significant since it points out that the objections here are valid only upon acceptance of the assertion that the government was a participating party in the instant case and, therefore, had all the rights spelled out in the McDonald case, 153 A.2d 651 (1959). To cite a case that stands for the proposition that the government is a "party Aggrieved" within sec. 11-772 (now sec. 11-741(b) is not also to cite good law in support of the contention of the Corporation Counsel that it has a right, as a party, to receive notice or give consent. The confusion of its position lies in the failure to distinguish

between types of parties. The objections here focus on the government's role as a necessary party, which is the issue in the instant case.

Part five of the Motion rests on the proposition that there must be sworn testimony of witnesses in order for there to be sufficient basis in law to dismiss a case. In the matter of Sippy, 97 A.2d.455(1953), does not stand for this proposition.

There is a difference between the government being a party to a juvenile proceeding for the purpose of being a "party aggrieved" within the meaning of sec. 11-741(b) and being a party in the sense of taking an active role in the proceedings and therefore being entitled to notice. At least this seems to be a valid distinction in light of sec. 11-1583(a) (1) and the D.C. Court of Appeals' holding in the McDonald case, supra. Although the government had in fact taken an active role in the proceedings in the McDonald case, the holding in that case is only that the government is a "party aggrieved." The party-taking-an-active role appears still to be governed by sec. 11-1583(a) (1). The Motion in the instant case appears to raise issues with respect to the sec. 11-1583(a) (1) type of party. All this is but one way of saying that an appellate court could rule on the proper construction to be given to sec. 11-1583(a) (1) without also overruling the McDonald case. The point to note is that the significance of the McDonald case relates to the fact that the government was held to be a "party aggrieved" and not that the government is always to be an active and necessary party in juvenile proceedings; that regardless of whether the court requests the

assistance of the government, the government has standing to appeal. The legislative history and case law in other jurisdictions and the District of Columbia make it fairly clear that the state is at least involved in juvenile proceedings via its parens patriae role and the remaining question really is what is the proper role of the representative of the state in juvenile proceedings under the Juvenile Court Act in view of sec. 11-1583(a) (1). Appellant contends that the state in this instance means the court acting as parens patriae. The McDonald case does not go so far as the Motion in the instant case as to entitle the government to be an active participant in juvenile proceedings without regard to sec. 11-1583(a) (1). At best it seems to be implied in the McDonald decision that a judge of the Juvenile Court has a choice: he can either request the assistance of the Corporation Counsel, pursuant to sec. 11-1583(a) (1) and thereby make the government an active participant in and full-fledged party to juvenile proceedings, or, he as the trial judge can proceed without the assistance of the Corporation Counsel and make his determinations in a case.

The Court has the right to determine the legal sufficiency of a complaint in the absence of the Corporation Counsel as much so as does the Corporation Counsel have the right to determine the legal sufficiency of a complaint in the absence of the court. In no instant is the court's deliberation to be diluted or impaired by the requirement of presence of the Corporation Counsel.

There is no support in the legislative history for the proposition that by approval of the petition the Corporation Counsel has entered its appearance in a juvenile proceeding. The House Committee Report (H.R. Rep.No. 177, 75th Congress, 1st Session) accompanying H.R. 4276, an act to create a Juvenile Court in and for the District of Columbia, states that "Information and complaint of criminal procedure give way to a petition setting forth the facts that bring the child within the provisions of the act." (At page 3.) In the "Statement of the Managers on the part of the House" it is clear that the Senate proposed an amendment whereby the Corporation Counsel would make the final determination as to whether a petition should be filed. The House version left it to "an officer of the juvenile court." A compromise was finally agreed upon whereby the Congress adopted the current procedure as set forth in sec. 16-2302. (See, Conference Report, 75th Congress, 3rd Session, H.R. Rep. No. 2258, May 2, 1938.) A report on the D.C. Juvenile Court in 1951, prepared by a special committee composed of representatives from the United Community Services, Washington, D. C., and the U. S. Department of Justice and the Children's Bureau, Social Security Administration, Federal Security Agency, indicates that the Corporation Counsel was in fact present in the courtroom at all juvenile delinquency hearings. The report, titled, "The Juvenile Court of the District of Columbia," states that

> "Operating within the Court is an Office of the Corporation Counsel. This office conducts in-

> formal hearings in certain types of cases, is responsible for approving legal aspects of petitions, serves as counsel to the court and represents the government in all proceedings before the court. While this office serves the Court, it is part of the Office of the Corporation Counsel and its staff is administratively responsible to the Office of the Corporation Counsel." (At page 7.)

And the later report comments:

> "The presence of a representative of the Corporation Counsel in all delinquency hearings is unnecessary. This merely adds to the work of an already busy office and increases the atmosphere of formality. In some case, the need of Corporation Counsel can be determined in advance; in all others, the Corporation Counsel or assistant should be available on call." (At page 32.)

However, while this may in fact have been the practice in the Juvenile Court over a number of years, the Congress was evidently not aware of it. For in 1961, when the Congress was considering amendments to the Juvenile Court Act, the following comments appear in the House Report accompanying H.R. 6747 (known as the "Davis Bill") (87th Congress, 1st Session, H.R. Rep. No. 1041, August 25, 1961, at pages 4-5):

"Duties of the Corporation Counsel:

There are several provisions in the bill which would change the working relationships between the Office of the Corporation Counsel and the Juvenile Court Branch. This committee regards these new procedures as a distinct improvement over similar provisions in present law. The bill provides that the Corporation Counsel shall first determine the legal sufficiency of the complaint when the case of a child is referred to the juvenile court. If the complaint lacks legal sufficiency, it is dismissed. If a petition can be filed, the case is then referred to the Director of Social Work who proceeds with the matter of investigation and the making of the determination of whether a petition shall be filed. On affirmative recommendation by the Director of Social Work, the Corporation Counsel shall file a petition with the juvenile court. If the Director of Social Work determines against filing a petition, his judgment may be followed by the Corporation Counsel, but if the Corporation Counsel finds that the public protection requires the filing of a petition, he may so do. Appellant here contends the court has at all times the right to determine the legal sufficiency of a complaint as well as the Assistant Corporation Counsel.

The present law does not require a determination of

the legal sufficiency of a complaint promptly after it is filed. This can be done only after the Director of Social Work make a request to the Corporation Counsel that a petition be filed. Meantime, the child may have the complaint pending for several weeks, have his normal life disrupted, and have his family, friends, and neighbors disturbed during the course of a social worker investigation and study. When the Director of Social Work finally presents the case to the Corporation Counsel for filing a petition, it may be discovered that the case lacks valid legal basis for presentation to court. Such procedure is an imposition on the child and a waste of time and effort by the social work staff. It may also be noted here that under present law, even the the Director of Social Work declines to request a petition be filed in a case, the person who filed the original complaint may again file his complaint, this time with the Corporation Counsel, and a petition may be filed in court. The bill preserves the substance of this part of present law.

Finally, where the present law provides for participation of the Corporation Counsel in many juvenile court proceedings only on request of the court, this bill directs that the Corporation Counsel actively represent the public in the presentation of all cases before the Juvenile Court Branch involving either a child or an adult."

The final paragraph quoted above, clearly indicates what was later specifically stated, namely that "...the Corporation

Counsel participates in the presentation of cases of juveniles only at the pleasure of the court." (Page 13 of the House Report No. 1041, supra.) It should be noted here that this bill was not passed and the "present law" referred to in the report was sec. 11-932, D. C. Code 1951 which is, in substance, sec. 11-1583(a) (1). In short, as Congress construed the provision relating to the role of the Corporation Counsel in juvenile proceedings, the Corporation Counsel was to participate in juvenile hearings only upon the request of the court. Since the equivalent of sec. 16-2302, referring to approval of the petition, was in existence at the time the House Report No. 1041 was published, it would seem to follow that according to the understanding and intention of the legislature, mere approval of a petition by the Corporation Counsel does not constitute participation as a party to a juvenile proceeding with all the consequent rights to notice of a participating party, and even should it do so the court, as here, has the right at any time to determine the legal sufficiency of a complaint, consistent with the Juvenile Court Act.

Although there is not much case law in point with regard to the Motion in the instant case, there are a few decisions which may be of help in making a determination of how to rule on the Motion. Again as in Part IV, supra, there are two aspects to be considered: first is the question of who is a party to juvenile proceedings; second is who is entitled to appeal. There is not much relevant discussion on the first point insofar as the role of a "prosecutor" in juvenile proceedings is concerned. Not all

states have a provision equivalent to sec. 11-1583(a) (1). See In re Lang, 255 NYS 2d. 987 (N.Y.Fam.Ct., 1965). In most states jurisdiction of the Juvenile Court in a proceeding to deal with a child as delinquent is invoked by a petition filed by some reputable person upon information and belief. (Section 61 Am. Jur., vol. 31.) In fact, those cases considering matters relevant here all proceed along the line that the juvenile court judge is, in effect, the representative of the state. See In re Lang, supra.

Such as it is, the case law does spell out the interest of the state in juvenile proceedings:

(1) "...where a child is neglected or delinquent, and where the parent contributes to or is responsible for such neglect or delinquency, then the state has the paramount role and right, in the interest of the welfare of the child, and the juvenile court has been made the special and exclusive tribunal for determining such issue." 415 Ill. 135, 112 N.E.2d697.

(2) "It is within the power of the legislature to provide that a minor who is deprived of effective parental care and control or commits lawless acts and violates criminal statutes or penal ordinances shall be considered a ward of the state over whom the state may exercise its sovereign power and guardianship, and to effect such power the legislature may make reasonable regulations for the protection and welfare of the minor." 79 N.D. 673, 59 N.W.2d. 514.

(3) "Proceedings against juveniles in juvenile court are an adjudication upon the status of a child in the nature of a guardianship imposed by the state as parens patriae to provide the care and guidance that under normal circumstances would be furnished by the child's parents." See section 53, "Juvenile Courts, vol. 31 of Am.Jur." and cases cited therein.

At least one case has dealt with the limitations on the state's participation in Juvenile proceedings:

> "To hold that the state must go through all the preliminaries and processes usual in the trial of criminal cases before it can give to the minor who is bereft of his parent or guardian the needed and necessary protection and care would render the act nugatory and deprive it of the greater part of its benevolent purposes." Re Sharpe, 15 Idaho 120, 96 P.2d. 563, 18 LRA NS 886.

In speaking of the specific subject of parties to juvenile proceedings, the court in Re Aronson, 263 Wis. 604, 58 N.W.2d. 553, in construing an appeal statute, noted that "In speaking of a person as being a party to juvenile proceedings it is not meant that he is an adversary party in the sense of a plaintiff or defendant in the ordinary lawsuit, since juvenile proceedings are in the nature of a judicial investigation without adversary parties." The minor himself is not deemed to be an adverse

party. 83 Cal.App.2d.339, 189 P.2d. 525; and see "Juvenile Courts," sec. 56, Am.Jur., vol. 31.

The Claifornia statute (Cal.Wel. & Inst. Code, sec. 800 (Supp. 1963)) appears to rule out attack on a determination that the child is not involved or not dependent by the government. (See, Addison M. Bowman, "Appeals from Juvenile Court," Crime and Delinquency, vol.11, number 1, January1965 at page 77.) The Tennessee statute (Tenn. Code Ann. sec. 37-273 (Supp.1963)) seems to allow appeal by the state since it says either party dissatified with the judgment or order may appeal. (Ibid.) The state of Washington by contrast, has through its courts, recognized that if the government is denied the right to an appeal, then it could seek a writ of certiorari as a party denied due process by the Juvenile Court. In re Messmer, 52 Wash.2d.510, 326 P.2d. 1004 (1958). The Wisconsin court in Re Aronson, supra, in determining who had standing to sue under its appeal statute, looked at which persons are mentioned in their juvenile court act with respect to who must be notified, consent, be present. The reasoning of the court in In Re Fish, 246 Wis.474, 17 N.W.2d.558 (1945) is interesting in the instant case for the court stated that:

> "Appellant cites cases which hold that to be constitutional a statute granting a right of appeal must grant it to both parties. But in such cases, the parties to a controversy had rights involved which were of equal importance. In this case, in the absence of statute there is no right on the part of the state or

a child welfare board to be heard further in the proceedings. It has been the legislative policy to deal carefully with parental rights and to interfere only when the welfare of the child demands it. Consequently, the state in granting a limited right of investigation to the juvenile court may protect the paramount interest of the parent by limiting a review to an appeal from any adverse order of the juvenile court affecting such interest. "At 17 N.W.2d.558,559.)

The most important case in the District of Columbia for present purposes is, of course, In re McDonald, 153 A.2d. 651 (1959). "Appeals from Juvenile Courts," by Addison M. Bowman, Crime and Delinquency, vol. 11, number 1, January 1965.

The Corporation Counsel argued in the McDonald case that under sec. 11-772(a), D. C. Code, "Appellant is clearly a "Party aggrieved" within the meaning of the foregoing statute, and Section 11-938, D.C. Code 1951, specifically provides that in all cases tried before the Juvenile Court the judgment of the Court shall be final." (At page 3 of the "Memorandum of Points and Authorities in Opposition to Motions to Docket and Dismiss Appeal," filed August 15, 1958.) The Corporation Counsel specifically disclaimed any inference that it was asserting a right to appeal arising out of sec. 23-105, relating to criminal procedure. In a footnote, Corporation Counsel further noted that "Since juvenile court legislation is based

upon the inherent right in the state to take over the custody of a child when circumstances make it necessary to do so, the state is a real party to the juvenile court proceedings. People v. Piccolo 1916, 275 Ill.453, 114 N.W. 145." (At page 6, fn.2 of the Brief filed by the Corporation Counsel.) Amazing though it may seem today, this represents the total comment by the Corporation Counsel on its right to appeal. The rest of its argument focuses on the fact that the proceedings in Juvenile Court are civil in nature, that the doctrine of double jeopardy is not applicable to respondent in proceedings in Juvenile Court, and that the motion to dismiss should not be entertained until the D. C. Court of Appeals has considered briefs from all parties. Its main point is summarized as follows:

> "The instant appeal represents the first appeal undertaken by the District of Columbia in a Juvenile Court proceedings involving delinquency. Appellant's right to appeal is predicated on the very basic proposition that a proceeding in the Juvenile Court is not criminal in nature but is a special statutory civil proceeding. The right of the Government to appellate review of juvenile delinquency proceedings lies at the very foundation of an effective enforcement of the law respecting juvenile offenders in the District of Columbia.

> Inasmuch as appellees herein are not in custody, and in view of the profound importance of the issues herein, the Court, alternatively, is requested to defer its ruling on appellee's motions until after the Court has received the benefit of written briefs and oral argument from all parties." (At pages 6-7 of the Memorandum of Points and Authorities...."supra.)

The appellee's briefs discussed the matter of the right to appeal more thoroughly. In the brief filed by Richard Tompkins and Everett L. Edmond, the original Juvenile Court Act (Act of March 19, 1906, 34 Stat. 73, ch. 960 (1906) was discussed with regard to the fact that it provided that the juvenile court has original and exclusive jurisdiction over all crimes and offenses and prosecution shall be by information and prosecution entrusted to the Corporation Counsel. Section 22 of chapter 960 specifically gave the United States and the District of Columbia or any defendant the right to appeal.

CONCLUSIONS

Section 11-1583(a)(1) gives the government a right upon request by the Court to assist the Court in juvenile proceedings. Presumably such a request does not infringe upon the Court's right to determine the sufficiency of the evidence for trial. This is certainly so since the Corporation Counsel could have done at any time the very thing the Court did in the instant case without consulting or even informing the Court. Certainly the Court has no less a discretionary power that the Office of the Assistant Corporation Counsel.

Respectfully Submitted,

Carroll F. Tyler, Jr.

Carroll F. Tyler, Jr.
Attorney for Appellant
513 F Street, N. W.
Washington, D. C.
National 8-2897

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief was mailed, postage prepaid, this 23rd day of November, 1966, to the Office of the Corporation Counsel, District Building, Washington, D. C.

Carroll F. Tyler, Jr.

Carroll F. Tyler, Jr.
Attorney for Appellant
613 F Street, N. W.
Washington, D. C.
National 8 2897

BRIEF FOR APPELLEE

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 20,094

ALFRED EUGENE RICE,

Appellant,

v.

DISTRICT OF COLUMBIA,

Appellee.

Appeal From The District Of Columbia
Court Of Appeals

CHARLES T. DUNCAN,
Corporation Counsel, D. C.

MILTON D. KORMAN,
Principal Assistant Corporation
Counsel, D. C.

HUBERT B. PAIR,
Assistant Corporation
Counsel, D. C.

RICHARD W. BARTON,
Assistant Corporation
Counsel, D. C.

Attorneys for Appellee,
District Building,
Washington, D. C. 20004

QUESTIONS PRESENTED

In the opinion of appellee, the questions presented are:

1. In the circumstances of this case, was it "violative of proper judicial procedure" and reversible error for the Juvenile Court to sua sponte dismiss without a hearing the petition alleging that appellant, having violated a law of the District of Columbia, was within the provisions of D. C. Code, § 11-1551 (Supp. V, 1966)?

2. Does the District of Columbia have standing, under D. C. Code, § 11-741 (Supp. V, 1966), to appeal from an order of the Juvenile Court dismissing a petition alleging that a child is within the provisions of D. C. Code, § 11-1551 (Supp. V, 1966)?

I N D E X

Page

SUBJECT INDEX

CASES CITED

DISTRICT OF COLUMBIA CODE CITED

ACTS OF CONGRESS CITED

RULES OF COURT CITED

OTHER AUTHORITIES CITED

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 20,094

ALFRED EUGENE RICE,

Appellant,

v.

DISTRICT OF COLUMBIA,

Appellee.

Appeal From The District Of Columbia
Court Of Appeals

BRIEF FOR APPELLEE

COUNTER-STATEMENT OF THE CASE

On June 5, 1964, Detectives Angelo Bonaccorsy and Stanley E. Brown of the Metropolitan Police Department gave to the Director of Social Work of the Juvenile Court a written complaint that appellant Alfred Eugene Rice (hereinafter, "respondent"), then 16 years of age, had raped a 16 year old girl (R. 1, 3).

As required by D. C. Code, § 16-2302 (Supp. V, 1966), Otis C. Davenport, an Intake Officer of the Juvenile Court, thereupon made a "preliminary investigation to determine whether the interests of the public or of the child require[d] that further action be taken, and report[ed] his finding, together with a statement of the facts, to the Director of Social Work" (R. 3, 11).

The Director of Social Work, having "found that the interests of the public and of the child required the filing of a petition * * * [and having] consulted with and obtained the approval of the Assistant Corporation Counsel assigned to the Court," authorized the filing of a petition (R. 3, 11).

Accordingly, on June 18, 1964, a petition, verified by Otis C. Davenport, was filed with the court (R. 1, 5). The petition alleged that the respondent was within the jurisdiction of the court in that:

> "* * * said child at about 10:00 PM on May 31, 1964, in company with Herbert L. Bradford, age 18, and two other unknown males, assaulted Barbara Ann Pratt, age 16, by grabbing her, forcing her hands behind her back, and forcibly taking her into an alley alongside a garage, rear of 607 Sixth Street, N. E., in the District of Columbia, and had sex relations with her against her will." (R. 5.)

On the following day, June 19, 1964, the respondent and his parents appeared before Chief Judge Miller of the Juvenile Court. The allegations in the petition were read to him and he was informed of his right to be represented by counsel. The respondent waived his right to be represented by counsel at the "arraignment" only and denied the allegations in the petition. The case was then continued subject to the call of the clerk's office for trial by the court. (R. 1.) On June 24, 1964, Carroll F. Tyler, Jr., Esquire, entered his appearance as counsel for the respondent (R. 11, 25).

At about 2:00 p. m. on April 14, 1965, the case came on for trial before the court, with the Honorable Orman W. Ketcham presiding (R. 14).

The court first inquired of Assistant Corporation Counsel P. James Underwood whether he was ready to proceed. Mr. Underwood announced that the Government was ready. (R. 1, 14.)

The court then inquired of Carroll F. Tyler, Jr., Esquire, counsel for the respondent, whether the respondent was ready. Mr. Tyler replied that he would have to request a continuance because he had been under the mistaken impression that the case had been scheduled for some purpose other than for trial and that he had, therefore, not prepared the case for trial. (R. 14.)

In response to an inquiry by the court as to whether he had any objection to the respondent's motion for a continuance, Mr. Underwood stated that the case had been pending for almost a year, that all witnesses the Government desired the court to hear were present, that it appeared probable that some of the witnesses would not be available at a later date, and that he was, therefore, constrained to object to a continuance (R. 14).

The court then inquired of Mr. Underwood the names of the witnesses and was informed of the names of all witnesses present, one of whom was identified as Herbert L. Bradford, an adult who had been charged in connection with the same offense alleged to have been committed by the respondent[1] (R. 14).

When asked by the court whether he was informed respecting the present status of the charge brought against Mr. Bradford, Mr. Underwood replied that he was not. The court then instructed the bailiff to bring Mr. Bradford into the courtroom from the witness

---

[1] Although not reflected in the record, Mr. Bradford had been summoned, not at the request of the Government or of the respondent, but in accordance with standing instructions of Judge Ketcham to the clerk of the court to summons, in all cases set for trial, any person (whether juvenile or adult) who was alleged to have participated in the offense charged against the respondent whose case was to be heard. The Government had not intended to call Mr. Bradford as a witness.

room. When this was done, the court inquired of Mr. Bradford the status of the charge against him. Mr. Bradford replied that the charge had been dropped "because the girl had lied about the whole thing." (R. 1, 15.)

Claiming that equal justice so required, Mr. Tyler then moved the court to dismiss the petition against the respondent on the ground that the grand jury had failed to indict Mr. Bradford. The motion was denied "pending further investigation into the actions of the Grand Jury." At this point, Mr. Tyler renewed his motion for a continuance, stating that he desired an opportunity to explore the circumstances of the grand jury's disposition of the charge against Mr. Bradford. (R. 1, 26.)

The court thereupon granted the respondent's motion for a continuance, the case was continued subject to the call of the clerk of the court, and all witnesses were informed accordingly. The court directed that the Assistant United States Attorney who had presented to the grand jury the charges against Mr. Bradford be requested (or summoned) to appear at the next hearing. The court then proceeded with the trial of an unrelated case. (R. 1, 26.)

About ten minutes later, Judge Ketcham requested Detectives Angelo Bonaccorsy and Stanley E. Brown, who had not yet left the

courthouse, to come into his chambers. Judge Ketcham also made a telephone call to Intake Officer Otis C. Davenport, who had sworn to the petition, requesting him to join them in his chambers. Mr. Davenport arrived about five minutes later. Neither Detectives Bonaccorsy nor Brown nor Intake Officer Davenport was placed under oath. Neither the respondent, his counsel, nor an Assistant Corporation Counsel was informed of this meeting. (R. 1, 26-27.) The stated purpose of the meeting was "to explore the question of whether there was reasonable ground to believe that respondent was involved in the sexual assault alleged in the petition" (R. 12).

The statement of proceedings and evidence approved by Judge Ketcham is silent respecting what occurred at this meeting[2] (R. 14-15, 26-27). The docket entry for April 14, 1965, reads, in part, as follows:

> "Later:
> The Court conferred with Detective Bonnocorsy [sic] of the Metropolitan Police Sex Squad and Detective Stanley Brown of the Juvenile Division and ascertained that Bonocorsy [sic] presented the case against Herbert L. Bradford to the Grand Jury which

---

[2] The statement of proceedings and evidence was settled and approved without the customary conference with counsel.

> returned an 'Ignoramus' (rather than an Indictment) after hearing alibi witnesses who accounted for the whereabouts of both Herbert L. Bradford and this Respondent at the time of the alleged rape. * * * [emphasis supplied]." (R. 2.)

However, three months later, on July 13, 1965, "[b]ased on recently disclosed affidavits of Detectives Bonaccorsy and Stanley Brown," the court corrected this portion of the docket entry of April 14, 1965, to read:

> "Later:
> The Court conferred with Detective Bonaccorsy of the Metropolitan Police Sex Squad, Detective Stanley Brown of the Juvenile Division, and Intake Officer Otis C. Davenport of the Juvenile Court, and ascertained that Detective Bonaccorsy presented the case to the Grand Jury which returned an 'Ignoramus' after hearing alibi witnesses who accounted for the whereabouts of Herbert L. Bradford at the time of the alleged rape. * * * "[3] (R. 2A.)

---

[3] Judge Ketcham's application for an extension of time within which to settle a statement of proceedings and evidence, filed in the District of Columbia Court of Appeals on July 6, 1965 (No. 3018 Orig.), asserts that appellee's proposed statement of proceedings and evidence, filed June 21, 1965, contains "* * * gross misrepresentations in the next to last paragraph of said Statement of Proceedings and Evidence which are patently in error and in direct conflict with the Court Clerk's memorandum of April 14, 1965." The penultimate paragraph of appellee's proposed statement of proceedings and evidence (R. 15-16) is, however, in substantial accord with the entry of April 14, 1965, as corrected on July 13, 1965.

Later in the afternoon of April 14, 1965, Mr. Tyler presented to Judge Ketcham "a certified copy of the Grand Jury's dismissal of Mr. Bradford" (R. 27).

Thereafter, on the same day, Judge Ketcham "with the consent and approval of the petitioner (Otis C. Davenport) and the investigating police officers (Bonaccorsy and Brown) dismissed the petition and placed respondent on probation to the Court in Docket No. 46-909-J on another, unrelated matter" (R. 2-2A, 25, 27). The other "unrelated matter" involved a charge against the respondent of "petit larceny from auto" (R. 25).

On April 21, 1965, the District of Columbia, by an Assistant Corporation Counsel, filed a timely motion to set aside the dismissal of the petition and to calendar the case for trial (R. 2, 8-9). As grounds for its motion, it asserted, inter alia, that:

> "By the ex parte dismissal of this case on April 14, 1965, the District of Columbia, a party to this action (In the Matter of McDonald, 153 A. 2d 651) has been denied its right to receive due notice and, through its counsel, to participate at all stages of these proceedings." (R. 9.)

On May 5, 1965, the respondent, by counsel, moved the court for an extension of time within which to file an answer to the District's

motion to set aside the dismissal of the petition (R. 10). Respondent's motion was promptly granted (R. 10), but no answer was filed within the time allowed (R. 1-2A).

On June 1, 1965, the court entered an order denying the District's motion to set aside the dismissal of the petition (R. 2, 13). In a memorandum opinion accompanying its order, the court acknowledged that the petition had been filed "* * * on behalf of the D. C. Government * * * after the Director of Social Work of the Juvenile Court found that the interests of the public and of the child required the filing of a petition, and had consulted with and obtained the approval of the Assistant Corporation Counsel assigned to the Court" (R. 11).

The court concluded, however, that "[t]hese actions did not constitute the entry of an appearance by the Corporation Council [sic] in the above entitled juvenile proceedings, and did not made the Corporation Counsel a necessary party to these proceedings"; that "[b]ecause the Assistant Corporation Counsel who was in the court at that time [i.e., on May 14, 1965] expressed objection to any continuance and declined to obtain information as to the related

Grand Jury proceedings,[4] the Court did not request the assistance of the Assistant Corporation Counsel in this case"; and that Intake Officer Otis C. Davenport, the Juvenile Court employee who had verified the petition, was the person "representing the District of Columbia in this case" (R. 11-12).

Upon appeal, the District of Columbia Court of Appeals held (1) that, in the circumstances here presented, the sua sponte dismissal of the petition without a hearing was "violative of proper judicial procedure" and "constitutes prejudicial error" and (2) "[t]hat the District of Columbia, for the protection and best interests of the municipality and of the public, has an inherent role in the proceedings of the Juvenile Court * * * and may appeal 'when it is offended by a ruling of the court' " (R. 45, pp. 3-5).

In disposing of the appeal, the District of Columbia Court of Appeals found it unnecessary "to decide the exact interpretation to be given the 'upon request' provision of the statute," but that:

> "To avoid future similar confusion or conflict in the Juvenile Court relating to attendance and participation

---

[4] Nowhere in the record is there the slightest indication that he was at any time asked to do so.

> of the Corporation Counsel in juvenile proceedings, it is suggested that the 'request' provision of § 11-1583 be studied by all three judges of that court in joint session for the purpose of adopting a uniform policy or rule of court in respect to its application to all proceedings there." (R. 45, p. 5.)

SUMMARY OF THE ARGUMENT

The provisions of the Juvenile Court Act, including, inter alia, the unique provision for trial by jury; the legislative history of the Act; the Rules of the Juvenile Court adopted pursuant to statutory authority; and the decisions of the District of Columbia Court of Appeals and of this Court, all make manifest that the District of Columbia is a party to juvenile proceedings with the right, through counsel, to be present at and to participate therein.

Assuming, arguendo, that a judge of the Juvenile Court may, in a particular case, fail or decline to request the assistance of the Assistant Corporation Counsel, in the circumstances of the instant case, the withdrawal of the request for the assistance of the Assistant Corporation Counsel and the sua sponte dismissal without a hearing of the petition was "violative of proper judicial procedure" and reversible error.

Because the District of Columbia was a party to the juvenile proceedings and was "aggrieved" by the dismissal of the petition, it has a right, under D. C. Code, § 11-741 (Supp. V, 1966), to appeal to the District of Columbia Court of Appeals.

ARGUMENT

I

In the circumstances here presented, the sua sponte dismissal of the petition without a hearing was "violative of proper judicial procedure" and reversible error.

The stated purpose of the meeting in Judge Ketcham's chambers on April 14, 1965, was "to explore the question of whether there was reasonable ground to believe that respondent was involved in the sexual assault alleged in the petition" (R. 12).

What occurred at this meeting is not clear from the record. It seems, however, to have involved a discussion of the possible reasons why the grand jury failed to indict Herbert L. Bradford, an 18 year old youth who was alleged to have participated in the offense charged against the respondent.

In any event, shortly after the conclusion of the meeting, Judge Ketcham sua sponte "dismissed the petition and discharged respondent in this case." According to the record, this action was

"[w]ith the consent and approval of the petitioning Intake Officer, Otis Davenport, and both police officers." (R. 2A.)

Although again not clear from the record, Judge Ketcham's dismissal of the petition appears to have been based on his admittedly erroneous impression that, at the grand jury proceedings involving Mr. Bradford, alibi witnesses had "accounted for the whereabouts of both Herbert L. Bradford and this Respondent at the time of the alleged rape [emphasis supplied]" (R. 2-2A) and his impression (also perhaps erroneous)[5] that the two police officers and Mr. Davenport "were all persuaded that, as a result of the finding of the U. S. Grand Jury in the related case of Herbert L. Bradford, there was no longer any reason to believe that respondent had committed the sexual assault alleged in the petition" (R. 12).

In his memorandum opinion denying the motion of the District of Columbia to set aside the dismissal of the petition, Judge Ketcham acknowledged that the petition had been filed "in accordance with Section 16-2302 of the D. C. Code, on behalf of the D. C. Govern-

---

[5] The "recently disclosed affidavits of Detectives Bonaccorsy and Stanley Brown" referred to in the corrected docket entry of April 14, 1965 (R. 2-2A), were not filed in the Juvenile Court and, accordingly, were not included in the record on appeal.

ment, * * * [with] the approval of the Assistant Corporation Counsel assigned to the Court." He held, however, that "[t]hese actions did not constitute the entry of an appearance by the Corporation Council [sic] in the above entitled juvenile proceedings, and did not make the Corporation Counsel a necessary party to the proceedings" (R. 11) and that Intake Officer Davenport, who had sworn to the petition, and not the Corporation Counsel, was the person "representing the District of Columbia in this case" (R. 12-13).

In D. C. Code, § 1-301 (1961), it is provided that "[t]he corporation counsel shall * * * have charge and conduct of all law business of said District, and all suits instituted by and against the government thereof * * * ." He "[i]s attorney for and chief law officer of the District of Columbia Government and has charge of all its law business," including " * * * all cases within the jurisdiction of the Juvenile Court * * * ." D. C. Code, Title 1, Administration, Appendix, Reorganization Order No. 50.

The filing of the petition herein obviously constituted the institution by the District of Columbia of a judicial proceeding. Although entitled ex parte, the petition was, and by statute could only have been, filed upon "approval by the corporation counsel or his assistant assigned to the court." Indeed, under the statute, the

Corporation Counsel "may authorize a petition to be filed" even though the Director of Social Work has failed to find "that jurisdiction should be acquired." D. C. Code, § 16-2302 (Supp. V, 1966).

It would thus appear axiomatic that the Corporation Counsel, or his assistant assigned to the court, was the official who properly represented the District of Columbia in this case and that, as such, he should have been permitted to be present at and to participate in the proceedings. Cf. People v. Piccolo, 275 Ill. 453, 114 N. E. 145 (1916).

Relying upon a construction of D. C. Code, § 11-1583 (Supp. V, 1966), which the District of Columbia Court of Appeals characterized as "narrow, strained and unrealistic," respondent and amicus urge, however, that the Assistant Corporation Counsel assigned to the Juvenile Court may be present at and participate in juvenile proceedings if, and only if, the presiding judge specifically requests his assistance in connection with a particular case. Or, in other words, that the role of the Assistant Corporation Counsel in a juvenile proceeding is dependent entirely upon the sufferance of the presiding judge.

It is respectfully submitted that this is a gross misinterpretation of the intent of the Congress and that the command of the statute that "[t]he corporation counsel of the District of Columbia or

his assistant shall assist the court upon request in hearings to determine delinquency, dependency, or neglect * * * [emphasis supplied]"[6] was never intended to, and did not, take from the District of Columbia the fundamental right of a party to a judicial proceeding to be present at and, by counsel, to participate therein. This is clear both from the language of the statute and its legislative history. See House of Representatives Report No. 177 and Senate Report No. 530, 75th Congress, 1st Session; House of Representatives Report No. 2258, 75th Congress, 3rd Session; all to accompany H. R. 4276.

The Act of March 19, 1906, 34 Stat. 73, ch. 960, which created the Juvenile Court, provided: "That prosecutions in the juvenile court shall be on information by the corporation counsel or his assistant," and the Corporation Counsel's participation in juvenile proceedings thereunder was substantially similar to that of government counsel in other criminal cases. Cf. Ledrick v. United States, 42 App. D. C. 384 (1914).

By the Act of June 1, 1938, 52 Stat. 569, ch. 309, the Congress completely revised the 1906 Act, made juvenile proceedings there-

---

[6] See Section 31 of the Act of June 1, 1938, 52 Stat. 603, ch. 309, now codified as part of D. C. Code, § 11-1583 (Supp. V., 1966).

under non-criminal in nature[7] (thus eliminating the need for a "prosecutor" in such cases) and gave to the Juvenile Court exclusive jurisdiction over delinquent, dependent, and neglected children in a large range of cases. D. C. Code, § 11-1551 (Supp. V, 1966). In so doing, the Congress recognized that the Corporation Counsel (who had previously been charged with the "prosecution" of juvenile cases) might believe that his participation therein was, in some cases, unnecessary and thus leave the court without needed assistant in gathering, marshalling and presenting all relevant evidence necessary to sustain the allegations in the petition or to explain or refute evidence presented by the child's counsel. Cf. Shioutakon v. District of Columbia, 98 U. S. App. D. C. 371, 236 F. 2d 666 (1956); In re Lang, 44 Misc. 2d 900, 255 N. Y. S. 2d 987 (1965). It was for this reason alone that the Congress provided that the Corporation Counsel shall assist the court upon request in hearings to determine delinquency, dependency, or neglect.

That the Congress intended that, under the Juvenile Court Act of 1938, supra, the District of Columbia retain the fundamental

---

[7] See Pee v. United States, 107 U. S. App. D. C. 47, 274 F. 2d 556 (1959).

right to be present at and, by counsel, to participate in hearings to determine delinquency, dependency, or neglect is inherent throughout the statute. For example, as previously noted, no petition can be filed in any case except with the express approval of the Corporation Counsel or one of his assistants. D. C. Code, § 16-2302 (Supp. V, 1966). And in some types of juvenile proceedings a jury trial is provided. D. C. Code, § 16-2307 (Supp. V, 1966).

Moreover, the right of the District of Columbia to be represented by counsel in juvenile proceedings is expressly recognized by the Rules of the Juvenile Court adopted and published pursuant to D. C. Code, § 11-1526 (Supp. V, 1966). Such Rules, of course, have "the force and effect of law." District of Columbia v. Jones, 183 A. 2d 391 (1962).

Rule 8, relating to continuances and advancements of cases; Rule 10, relating to the submission to the clerk of the court of lists of witnesses to be summoned; Rule 11, relating to the making and serving of written motions; Rule 13 D and E, relating to peremptory challenges, and stipulations that a jury may consist of less than twelve persons; Rule 15, relating to jury instructions; Rule 16, relating to exceptions; Rule 18, relating to appeals, and other rules, unquestionably contemplate actions which the District of Columbia may take only through counsel.

The fallacious nature of the reasoning of respondent and of amicus is thus rendered obvious, for surely the fundamental right of the District of Columbia, made manifest both by the statute and by the rules of the court, to be represented by counsel in juvenile proceedings cannot be abrogated by the simple expediency of the disinclination of the presiding judge to request, in a particular case, the assistance of the Assistant Corporation Counsel assigned to the court.

From the time of the enactment of the Juvenile Court Act of 1938 until the present, the various judges of the Juvenile Court (with the exception of Judge Ketcham) have consistently recognized the District of Columbia as a party to juvenile proceedings and the Corporation Counsel as its proper representative. See "The Juvenile Court of the District of Columbia," a report prepared in 1951 by a special committee composed of representative of the United Community Services, Washington, D. C.; the United States Department of Justice; and the Children's Bureau, Social Security Administration, Federal Security Agency, quoted, in part, at pages 10-11 of respondent's brief.

When, in about 1961, Judge Ketcham, then the sole judge of the Juvenile Court, for the first time raised a question concerning the status of the District of Columbia as a party to juvenile pro-

ceedings and the role of the Corporation Counsel with respect thereto, H. R. 12852, 87th Congress, 2nd Session, "A Bill to amend the Juvenile Court Act of the District of Columbia to clarify the functions of the Corporation Counsel in the juvenile court, and for other purposes," was introduced. Section 2(c) of the Bill provided that:

> "(c) Section 31 of the Juvenile Court Act of the District of Columbia (D. C. Code, sec. 11-932 [now § 11-1583]) is amended to read as follows:
>
> " 'Sec. 31. The District of Columbia is hereby made a party to all proceedings in the juvenile court. The corporation counsel or his assistant shall present all cases within the jurisdiction of the court involving a child and shall prosecute all cases within the jurisdiction of the court in which an adult is charged with a crime.' "

A similar provision was contained in Section 23 of H. R. 6747, 87th Congress, 1st Session, "A Bill to amend the Juvenile Court Act of the District of Columbia." At pages 4-5 and 13 of House of Representatives Report No. 1041, 87th Congress, 1st Session, to accompany H. R. 6747, the committee notes Judge Ketcham's constructions of "present law" and its conviction that clarifying legislation is needed. Neither Bill was enacted into law.

Even assuming, arguendo, that a judge of the Juvenile Court has discretion, in a particular case, to decline to request the assistance of an Assistant Corporation Counsel, it is clear that the circumstances of this case establish a manifest abuse of discretion. It is undisputed that, at the proceedings in the courtroom on April 14, 1965, Judge Ketcham recognized the Assistant Corporation Counsel as the proper representative of the District of Columbia (R. 14-15, 26) and had, at least impliedly, requested his assistance at that time. However, because the Assistant Corporation Counsel "* * * expressed objection to any continuance and [allegedly] declined to obtain information as to the related Grand Jury proceedings * * * " (R. 11-12), the request was apparently withdrawn and the petition dismissed without the knowledge or participation of the Assistant Corporation Counsel. As the District of Columbia Court of Appeals held, this was "violative of proper judicial procedure" and reversible error.

II

The District of Columbia has standing to appeal from the order of the Juvenile Court dismissing the petition.

In the instant case, the District of Columbia Court of Appeals held:

> "That the District of Columbia, for the protection and best interest of the municipality and of the public, has an inherent role in the proceedings of the Juvenile Court is reflected in our statute and established by decisions of this court. * * * And we have held that the District of Columbia is a party to a juvenile proceeding and may appeal 'when it is offended by a ruling of the court.' In Re McDonald, D. C. Mun. App., 153 A. 2d 651 (1959), cert. denied sub nom. Cooper v. District of Columbia, 363 U. S. 847 (1960). * * * "

A petition for the allowance of an appeal from the judgment of the Municipal Court of Appeals in McDonald was sought from this Court. In the brief in support of their petition, it was forcefully urged on behalf of the juveniles involved that the Municipal Court of Appeals had erred in holding that the District of Columbia was a "party aggrieved" within the meanding of D. C. Code, 1951, § 11-772(a) [now § 11-741 (Supp. V, 1966)] and that the District of Columbia, accordingly, had standing to appeal from the adverse

judgment of the Juvenile Court. This Court denied the petition (No. 15,319). It has thus been the established law of this jurisdiction for many years that the District of Columbia is a party to a juvenile proceeding and may appeal "when it is offended by a ruling of the court."

Although the amicus suggests that McDonald was erroneously decided and should now be overruled, no compelling reason for doing so is presented. The unique provisions of the District of Columbia Juvenile Court Act, including the right, upon demand, to a trial by jury in proceedings involving violations of law, render the statutory provisions of other jurisdictions not even persuasive.

Obviously, if, as the respondent and amicus urge, the District of Columbia is not a party to juvenile proceedings in the Juvenile Court, it cannot properly be a party, either as appellant or as appellee, to the case when it is appealed. Yet, both the District of Columbia Court of Appeals and this Court have, on numerous occasions, recognized the District of Columbia as a proper party appellee to appeals from judgments of the Juvenile Court. See, e.g., In re Stuart, 72 App. D. C. 389, 114 F. 2d 825 (1940); In re Kroll, 43 A. 2d 706 (1945); In re Davis, 83 A. 2d 590 (1951); In re Lambert, 86 A. 2d 411 (1952); aff'd. 92 U. S. App. D. C. 104, 203 F. 2d 607

(1953); In re Lewis, 88 A. 2d 582 (1952); In re Sippy, 97 A. 2d 455 (1953); Shioutakon v. District of Columbia, 114 A. 2d 896 (1955), reversed, 98 U. S. App. D. C. 371, 236 F. 2d 666 (1956); In re Bush, 116 A. 2d 410 (1955); In re Hoffman, 119 A. 2d 113 (1955); In re Schaeffer, 126 A. 2d 870 (1956); In re Mullen, 144 A. 2d 919 (1958); Swann v. District of Columbia, 152 A. 2d 200 (1959); Thompson and Green v. District of Columbia, 158 A. 2d 687 (1960); In re Lem, 164 A. 2d 345 (1960); In re Nichols, 179 A. 2d 915 (1962); In re Kent, 179 A. 2d 727 (1962), reversed, Kent v. District of Columbia, 114 U. S. App. D. C. 330, 316 F. 2d 331 (1963); In re Bigesby, 202 A. 2d 785 (1964); In re Elmore, 222 A. 2d 255 (1966).

CONCLUSION

Upon the foregoing, it is respectfully submitted that the judgment of the District of Columbia Court of Appeals is in all respects correct and in accordance with law and should, therefore, be affirmed.

CHARLES T. DUNCAN,
Corporation Counsel, D. C.

MILTON D. KORMAN,
Principal Assistant Corporation
Counsel, D. C.

HUBERT B. PAIR,
Assistant Corporation
Counsel, D. C.

RICHARD W. BARTON,
Assistant Corporation
Counsel, D. C.